



June 15, 2022

The Honorable Carol A. ("Annie") Petsonk
Assistant Secretary of Transportation for
Aviation and International Affairs
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

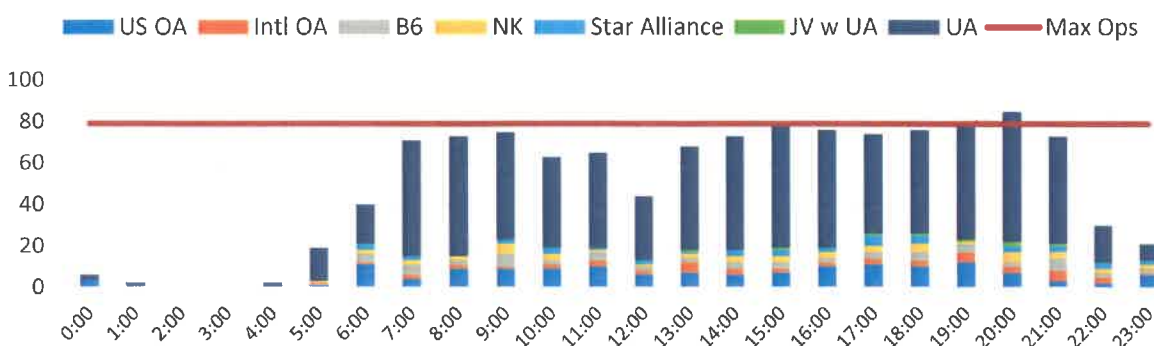
Mr. A. Bradley Mims
Deputy Administrator
Federal Aviation Administration
800 Independence Avenue SW
Washington, D.C. 20591

Dear Ms. Petsonk and Mr. Mims:

United Airlines in its letter of May 31, 2022 continues its effort to block competition at Newark Liberty International Airport (EWR) under the banner of relieving congestion while again making several incorrect assertions Spirit Airlines must correct on the record. United's views must be seen as seeking to protect its virtual monopoly status at Newark, where it operates **71% of both the airport's peak and total operations**. This level of dominance is not held by any airline at other FAA access-restricted airports, and United's obvious motive has been well recognized by the Department, the FAA, and the Department of Justice over the years.

United's four pages discussing the FAA 79 operations per hour cap is strong on rhetoric yet short on facts. As shown on the following chart, the FAA clearly is doing its job. International carriers are still operating far less in both total and peak hour operations than pre-pandemic levels, and JetBlue discontinued 17 peak operations between April and June.

EWR Movements per Hour on Jun 30



Only during the 20:00 hour do daily scheduled operations marginally exceed 79/hour. United has **63 operations** during this hour – which alone nearly reaches the 79 cap and is also *the most operations United has in any hour of the day*. Spirit, in comparison, only has five operations between 20:00-21:00. United with its 388 peak slots spread across the day, unlike Spirit or any other Newark airline, has the scheduling flexibility to move its flights and limit total hourly operations during any given peak-hour from exceeding 79.

As the Port Authority of New York and New Jersey wrote to the Department in August 2019, United’s Newark flight schedule is the determining factor for whether scheduled operations will exceed the 79/hour cap. This United-caused problem has an easy fix: the Department can and should limit *any single airline* from operating more than 50% of capacity for any peak-hour in which other airlines seek to fly and the 79/hour cap would otherwise be exceeded (such as the 20:00-21:00 hour for June 2022). That, among other approaches, would be a legitimate and productive way for FAA to initiate a schedule reduction meeting among all carriers serving Newark.

United’s suggestion that Spirit does not “*voluntarily cooperate*” with the FAA “to match schedules with available capacity” is patently false – a slap in the face to FAA staff and their difficult task of equitably managing the scheduling needs of 18 non-UA airlines at Newark against United’s dominance of 71% of desired times and its aggressive, often litigious, reaction to even the smallest hint of encroachment. As explained in our May 12 letter, Spirit’s new ad-hoc peak flights replace cancellations from international carriers that have not entirely resumed pre-pandemic flying, as fully supported by the FAA. Spirit voluntarily cooperated with the FAA – *as it does every scheduling season* – to adjust its Summer 2022 schedules, and in some peak-hours we adjusted as much as 50% of our flights to help the FAA manage congestion.

Hidden between the lines of United’s letter is its apparent goal for Newark to return to Level 3 slot controls. It wants Reference IDs to be mandatory (essentially slot-tracking at Level 2 airports). But United’s repeated mention of the voluntary Reference ID numbers used for “administrative tracking purposes” is a red herring; these numbers play no role in cooperation with the FAA on schedule adjustments and in fact are primarily for the benefit of carriers managing their historic precedence rights (slots) at Level 2 Newark.

United pretends to support reassignment of the former Southwest Newark slots “as long as the reassignment does not cause operations to exceed the 79 per peak-hour cap.” However, the only reason FAA failed to reassign those operations initially in 2019 was specifically because they were Southwest-grandfathered operations which exceeded the caps. Amazingly, these were part of **the slot pool that United agreed to divest by transfer to Southwest in order to merge with Continental** and assume that airline’s role as the dominant carrier at Newark since 1987 (when Continental merged with People Express).

United also continues to assault the pro-competition decision in the *Spirit v. DOT/FAA* case as if that opinion and mandate were not binding. None of United’s post-hoc

rationalization will change the DC Circuit Court of Appeals panel's *unanimous* decision based on a record which included the FAA's own predictive models. The Court clearly held that the Department acted arbitrarily by not recognizing the importance of maintaining peak-hour competition at Newark, notwithstanding the "miniscule" impact on delays which could have been addressed equitably through a schedule reduction meeting.

The only "simple" fact about the situation at Newark, and one that Spirit and United agree on, is that the airport and its traveling public have suffered from over a decade of the worst delays and congestion in the country. It is no coincidence that these problems have persisted for decades coinciding with United/Continental's unprecedented 71%+ dominance of EWR operational capacity, long before Spirit operated out of Newark.

On multiple occasions Spirit has volunteered to participate in a scheduling conference where all carriers would agree to equitable reductions. That would ensure that consumers have the same competitive choices they now enjoy. United makes no mention of such a conference in its letter (nor in any of its overheated correspondence related to the Southwest peak runway timings reassignment), because United realizes it would have to actually contribute to a resolution of the problem which would be anathema to its goal of limiting low-fare competition at Newark. Spirit looks forward to continuing to work closely with the Department and the FAA on Newark scheduling and competition to ensure a better airport experience for all travelers.

Respectfully,

A handwritten signature in dark ink, appearing to read "Matthew H. Klein". The signature is fluid and cursive, with the first name "Matthew" being more prominent.

Matthew H. Klein

Executive Vice President & Chief Commercial Officer

cc: The Honorable John E. Putnam
Captain Billy Nolen, FRAES
Ms. Laura Schiller
Mr. Todd Homan
Ms. Jessica Sypniewski
Mr. Tim Arel
Mr. Marc Nichols
Mr. Brian Meehan